



February 11, 1999

Mr. Kevin McCalla  
Director  
Texas Natural Resource Conservation Commission  
Legal Division  
P. O. Box 13087  
Austin, Texas 78711-3087

OR99-0437

Dear Mr. McCalla:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 122003.

The Texas Natural Resource Conservation Commission (the "commission") received an open records request from a commission employee for certain information pertaining to a particular job posting.<sup>1</sup> You contend that the requested records may be withheld from the employee pursuant to the "litigation exception," section 552.103(a) of the Government Code. To secure the protection of section 552.103(a), a governmental body must demonstrate that requested information "relates" to a pending or reasonably anticipated judicial or quasi-judicial proceeding. Open Records Decision No. 551 (1990).

You explain that another commission employee who applied for the posted position has filed a civil rights complaint with the Texas Commission on Human Rights under Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e-5, because he was not hired for the position. You have provided this office with a copy of that complaint. The filing of such a complaint constitutes evidence that the likelihood of litigation against the commission is more than mere conjecture. *See* Open Records Decision No. 386 (1983). Furthermore, in this instance you have made the requisite showing that the requested information relates to


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<sup>1</sup>Contrary to your assertion in your original correspondence to this office, the information at issue here has not been previously ruled upon by this office. The information at issue in Open Records Letter No. 98-1554 (1998) concerned a different job posting. Consequently, OR98-1554 does not constitute a "prior determination" for purposes of section 552.301 of the Government Code in this instance.

the reasonably anticipated litigation. The commission therefore may withhold the requested records at this time pursuant to section 552.103(a).<sup>2</sup>

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



William M. Walker  
Assistant Attorney General  
Open Records Division

WMW/RWP/ch

Ref.: ID# 122003

Enclosures: Submitted documents

cc: Ms. Marsha Hill  
5425 Polk Avenue, Suite H  
Houston, Texas 77023-1486  
(w/o enclosures)

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<sup>2</sup>In reaching this conclusion, however, we assume that the employee that filed the EEOC complaint has not previously had access to the records at issue; absent special circumstances, once information has been obtained by all parties to the anticipated litigation, *e.g.*, through discovery or otherwise, no section 552.103(a) interest exists with respect to that information. Open Records Decision Nos. 349 (1982), 320 (1982). In this regard we note that among the documents you submitted to this office is the job application of the complaining employee. This document and any other document previously viewed by the complaining employee must be released to the requestor. We also note that the applicability of section 552.103(a) ends once the litigation has been concluded. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982).